

PART 403—DISPOSITION OF SEIZED PERSONAL PROPERTY

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AUTHORITY: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

SOURCE: T.D. 7433, 41 FR 39312, Sept. 15, 1976, unless otherwise noted.

Subpart A—Scope of Regulations

§ 403.1 Personal property seized by the Internal Revenue Service.

Regulations in this part relate to personal property seized by officers of the Internal Revenue Service as subject to forfeiture as being involved, used, or intended to be used, as the case may be in any violation of the internal revenue laws other than chapters 51 (distilled spirits), 52 (tobacco) and 53 (firearms), of the Internal Revenue Code of 1954 (I.R.C.).

(Sec. 7325, 68A Stat. 870, as amended (26 U.S.C. 7325, (1), (4)); sec. 7326, 72 Stat. 1429, as amended (26 U.S.C. 7326 (a)))

[T.D. 7433, 41 FR 39312, Sept. 15, 1976, as amended by T.D. 7525, 42 FR 64344, Dec. 23, 1977]

§ 403.2 Personal property seized by the Bureau of Alcohol, Tobacco and Firearms.

Regulations in 27 CFR part 72 relate to personal property seized by officers of the Bureau of Alcohol, Tobacco and Firearms, as subject to forfeiture as being involved, used, or intended to be used, as the case may be, in any violation of chapters 51 (distilled spirits), 52 (tobacco) and 53 (firearms), of the I.R.C., as well as certain other federal laws. (Treasury Dept. Order No. 221 (June 6, 1972), 37 FR 11696; Treasury Dept. Order No. 221–3 (December 24, 1974), 40 FR 1084; Treasury Dept. Order No. 221–3 (Revision 2) (Jan. 14, 1977), 42 FR 3725.)

(Sec. 7325, 68A Stat. 870, as amended (26 U.S.C. 7325 (1), (4)); sec. 7326, 72 Stat. 1429, as amended (26 U.S.C. 7326 (a)))

[T.D. 7433, 41 FR 39312, Sept. 15, 1976, as amended by T.D. 7525, 42 FR 64344, Dec. 23, 1977]

§ 403.3 Forms prescribed.

The Commissioner of Internal Revenue or his delegate is authorized to prescribe all forms required by or necessary for the administration of this part. Information required by this part shall be furnished in accordance with

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the instructions issued with respect thereto.

Subpart B—Definitions

§ 403.5 Meaning of terms.

As used in this part, and unless the context otherwise requires, the following terms shall have the meanings set forth in this section. In this part words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not enumerated which are in the same general class.

(a) *Appraised value.* The value placed upon seized property by the appraisers pursuant to § 403.26(a)(2) for the purpose of determining whether the property may be forfeited administratively.

(b) *Equity.* For purposes of subpart D of this part, the petitioner’s interest in the subject personal property at the time of final administrative action on the petition, but not including:

(1) Any unearned finance charges accruing from the later of the date of seizure or the date of default;

(2) any amount rebatable on account of paid insurance premiums;

(3) attorney’s fees for collection;

(4) any amount identified as dealer’s reserve; or

(5) any amount in the nature of liquidated damages that may have been agreed upon by the buyer and the petitioner.

Subpart C—Seizures and Forfeitures

§ 403.25 Personal property subject to seizure.

Personal property may be seized by the Commissioner of Internal Revenue or his delegate for forfeiture to the United States when involved, used, or intended to be used, in violation of the internal revenue laws, other than chapters 51 (distilled spirits), 52 (tobacco)

and 53 (firearms) of the I.R.C. (Sec. 7321, 68A Stat. 869; 26 U.S.C. 7321.)

(Sec. 7325, 68A Stat. 870, as amended (26 U.S.C. 7325 (1), (4)); sec. 7326, 72 Stat. 1429, as amended (26 U.S.C. 7326(a))

[T.D. 7433, 41 FR 39312, Sept. 15, 1976, as amended by T.D. 7525, 42 FR 64344, Dec. 23, 1977]

§ 403.26 Forfeiture of seized personal property.

(a) *Administrative forfeiture.* (1) Personal property seized as subject to forfeiture under the internal revenue laws and this part which has an appraised value of \$2,500.00 or less shall be forfeited to the United States in administrative forfeiture proceedings except as otherwise provided in this section.

(2) If the Commissioner or his delegate seizes personal property which is forfeitable under the internal revenue laws and this part and which in his opinion is valued at \$2,500.00 or less, he shall cause a list containing a particular description of the seized property to be prepared in duplicate and an appraisal thereof to be made by three sworn appraisers, selected by the Commissioner or his delegate, who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisal shall be properly attested by the Commissioner or his delegate and such appraisers.

(3) If such forfeitable personal property is found by the appraisers to be of the value of \$2,500.00 or less, the Commissioner or his delegate shall publish a notice once a week for three consecutive weeks, in some newspaper of the judicial district where property was seized, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within 30 days from the date of the first publication of such notice.

(4) Any person claiming the personal property so seized, within the time specified in the notice, may file with the District Director of the internal revenue district in which the property was seized a claim, stating his interest in the articles seized, and may execute a bond to the United States in the

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penal sum of \$250, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation. The District Director shall transmit such claim, together with the duplicate list or description of the property seized, to the United States Attorney for the district in which such property was seized. Both the claim and the cost bond should be executed in quadruplicate.

(b) *Judicial condemnation.* Personal property seized as subject to forfeiture under the internal revenue laws and this part which has an appraised value of more than \$2,500 and such seized property which has an appraised value of \$2,500 or less with respect to which a bond has been filed pursuant to paragraph (a)(4) of this section, shall be forfeited to the United States in judicial condemnation proceedings, as authorized by the Director, General Legal Services Division, Office of Chief Counsel, Internal Revenue Service, or his delegate.

(Sec. 7323, 7325, 7326, 7401, 68A Stat. 869, 870, 873, 72 Stat. 1429, as amended; (26 U.S.C. 7323, 7325, 7326(a), 7401))

[T.D. 7433, 41 FR 39312, Sept. 15, 1976, as amended by T.D. 7525, 42 FR 64344, Dec. 23, 1977]

§ 403.27 Type and conditions of cost bond.

The cost bond filed by a claimant pursuant to § 403.26(a)(4) shall be a corporate surety bond. However, upon a showing to the satisfaction of the Commissioner or his delegate that such claimant is unable to furnish a corporate surety bond, such claimant may file a cost bond with individual sureties acceptable to the Commissioner or his delegate or, in lieu of such cost bond with corporate or individual sureties, he may deposit collateral pursuant to § 403.29.

§ 403.28 Corporate surety bonds.

A corporate surety bond may be filed only if the surety company issuing such bond holds a certificate of authority from the Secretary of the Treasury certifying that such company is an acceptable surety on Federal bonds, subject to the limitations prescribed by

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Treasury Department Circular 570 as amended.

(Sec. 6, 61 Stat. 648, as amended, sec. 7101, 68A Stat. 847, as amended; (6 U.S.C. 6, 26 U.S.C. 7101))

§ 403.29 Deposit of collateral.

Cash, postal money orders, certified or cashiers' or treasurers' checks, and bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by claimants as collateral security in lieu of corporate surety bonds in accordance with the provisions of Treasury Department Circular No. 154, revised (31 CFR part 225).

(Sec. 15, 61 Stat. 650, sec. 7101, 68A Stat. 847, as amended; (6 U.S.C. 15, 26 U.S.C. 7101))

§ 403.30 Special disposition of perishable goods.

The proceedings to enforce forfeiture of perishable goods shall, as is the case with proceedings to enforce forfeiture of nonperishable goods, be in the nature of proceedings in rem in the United States District Court for the district wherein such seizure is made. When any seized property is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the Commissioner or his delegate shall advise the owner, when known, of the seizure thereof. The owner of the seized property may apply to the District Director of the internal revenue district in which the property was seized to examine the property at any time prior to referral of the property to the U.S. Marshal for disposition. If, in the opinion of the Commissioner or his delegate it is necessary that such property be sold to prevent waste or expense, the Commissioner or his delegate shall cause the property to be appraised in accordance with the procedures set forth in § 403.26(a)(2). The owner shall have such property returned to him upon giving a corporate surety bond pursuant to § 403.28 in an amount equal to the appraised value of the property, to abide the final order, decree, or judgment of the court having cognizance of the case. The bond shall be conditioned to pay the amount of the

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appraised value to the Commissioner or his delegate, the U.S. Marshal, or otherwise, as may be ordered and directed by the court. The bond shall be filed by the Commissioner or his delegate with the U.S. Attorney for the district in which the proceedings may be commenced. If the owner of such property neglects or refuses to give such bond within a reasonable time considering the condition of the property, the Commissioner or his delegate shall request the U.S. Marshal to proceed to sell the property at public sale as soon as practicable and to pay the proceeds of sale, less reasonable costs of the seizure and sale, to the court to abide its final order, decree, or judgment.

(Sec. 7322, 7323, 7324, 68A Stat. 869, 870, as amended; (26 U.S.C. 7322, 7323, 7324))

Subpart D—Remission or Mitigation of Forfeitures

§ 403.35 Laws applicable.

Remission or mitigation of forfeitures shall be governed by the customs laws applicable to remission or mitigation of penalties as contained in 19 U.S.C. 1613 and 19 U.S.C. 1618.

(Sec. 613, 46 Stat. 756, as amended, sec. 618, 46 Stat. 757, as amended, sec. 7327, 68A Stat. 871; (19 U.S.C. 1613, 1618, 26 U.S.C. 7327))

§ 403.36 Interest claimed.

Any person claiming an interest in property seized by an officer of the Internal Revenue Service as subject to administrative forfeiture under this part may file a petition addressed to the District Director of the internal revenue district in which the property was seized for remission or mitigation of the forfeiture of such property.

§ 403.37 Form of the petition.

There is no standardized form provided or required by the Department of the Treasury for use in filing a petition for remission or mitigation of forfeiture. However, the petition should be typewritten on legal size paper; and must be executed under oath, prepared in triplicate, and addressed to the District Director of the internal revenue district in which the property was seized. All copies of original documents submitted as exhibits in support of al-

legations of the petition should be certified as true and accurate copies of originals. Each copy of the petition must contain a complete set of exhibits.

§ 403.38 Contents of the petition.

(a) *Description of the property.* The petition should contain such a description of the property and such facts of the seizure as will enable the Commissioner or his delegate to identify the property.

(b) *Statement regarding knowledge of seizure.* In the event the petition is filed for the restoration of the proceeds derived from sale of the property pursuant to an administrative forfeiture, it should contain, or be supported by, satisfactory proof that the petitioner did not know and could not have known of the seizure prior to the declaration of forfeiture. (See also § 403.39)

(c) *Interest of petitioner.* The petition should clearly and concisely indicate the nature and amount of his interest in the property on the date the petition is filed, and the facts relied upon to show that the petitioner was not willfully negligent and did not intend that the property be involved or used in violation of the internal revenue laws. Such petition may allege such other circumstances which in the opinion of the petitioner would justify the remission or mitigation of the forfeiture.

(d) *Petitioner innocent party.* If the petitioner did not commit the act which caused the seizure of his property, the petition should state how the property came into the possession of the person whose act did cause the seizure, and it should also state that the petitioner had no knowledge or reason to believe that the property would be involved or used in violation of the internal revenue laws. If the petitioner knows, at the time he files the petition, that the person in whose possession the seized property was at the time of the seizure had a record or reputation for committing commercial crimes, the petitioner should state in the petition whether the petitioner knew of such record or reputation before the petitioner acquired his interest in the property or before such other person came into possession of the property, whichever occurred later. For purposes of this

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paragraph, the term “commercial crimes” includes, but is not limited to any of the following federal or state crimes:

(1) Offenses against the revenue laws; burglary; counterfeiting, forgery; kidnapping; larceny; robbery; illegal sale or possession of deadly weapons; prostitution (including soliciting, procuring, pandering, white slaving, keeping house of ill fame, and like offenses); extortion; swindling and confidence games; and attempting to commit, conspiring to commit, or compounding any of the foregoing crimes. Addiction to narcotic drugs and use of marijuana will be treated as commercial crimes.

(2) [Reserved]

(e) *Documents supporting claim.* The petition should be accompanied by copies, certified by the petitioner under oath as correct, of contracts, bills of sale, chattel mortgages, reports of investigators or credit reporting agencies, affidavits, and any other documents that would support the claims made in the petition.

(f) *Costs.* The petition should contain an undertaking to pay any costs assessed as a condition of allowance of the petition. Such costs include but are not limited to all expenses incurred in seizing and storing the property; the costs borne or to be borne by the United States; the taxes, if any, payable by the petitioner or imposed in respect of the property to which the petition relates; the penalty, if any, asserted by the Internal Revenue Service; and, if the property has been sold, or is in the course of being sold, the expenses incurred relating to such sale.

§ 403.39 Time of filing petition.

A complete petition for remission or mitigation must be filed before the expiration of three months after the sale or other disposition of the property with respect to which the petition is filed. For purposes of this part, the term “sale or other disposition” includes acquisition of the property for official use.

(Sec. 613, 46 Stat. 756, sec. 306, 49 Stat. 880; (19 U.S.C. 1613, 40 U.S.C. 304(k)))

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§ 403.40 Place of filing.

The petition should be filed in triplicate with the District Director for the internal revenue district in which the property was seized.

§ 403.41 Discontinuance of administrative proceedings.

If the petition is filed prior to sale or other disposition of the property, proceedings to effect such sale or other disposition will be discontinued until the petition is either allowed or denied.

§ 403.42 Return of defective petition.

If the petition is defective in some correctable respect, the original of the petition will be returned by letter to the petitioner who will be allowed to submit a corrected petition, in triplicate, within a reasonable time.

§ 403.43 Final action.

(a) *Petitions for remission or mitigation of forfeiture.* (1) The Commissioner or his delegate shall either allow or deny any petition filed pursuant to these regulations. Such allowance or denial will constitute final action. If he allows the petition, the Commissioner or his delegate shall state the conditions, if any, of the allowance.

(2) If he allows the petition, the Commissioner or his delegate may order the property returned to the petitioner, sold for the account of the petitioner, or, pursuant to agreement with the petitioner, acquired for official use.

(3) The Commissioner or his delegate shall notify the petitioner of the allowance or denial of the petition and, in the case of allowance, the conditions, if any, under which the Commissioner or his delegate allowed the petition.

(b) *Offers in compromise of liability to forfeiture.* The Commissioner or his delegate shall accept or reject any offer in compromise of the liability to forfeiture of personal property seized pursuant to § 403.25 and such acceptance or rejection shall be a final action with respect to the offer.

§ 403.44 Acquisition for official use and sale for account of petitioner in the case of an allowed petition.

(a) *Acquisition for official use.* The seized property may be purchased by

the United States pursuant to agreement and retained for official use. Where the petitioner is the owner, the purchase price is the appraised value of the property less all costs. Where the petitioner is a creditor, the purchase price is the smaller of:

(1) The petitioner's equity, or (2) the appraised value of the property less the amount of all costs.

(b) *Sale for account of petitioner.* If the petitioner elects not to comply with the conditions, if any, set for the return of the property, the Commissioner or his delegate is authorized to sell the property. If the petitioner is the owner of the property, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale. The Commissioner or his delegate shall pay to the petitioner, out of the proper appropriation, an amount equal to the balance, if any. Where the petitioner is a creditor, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale, and the Commissioner or his delegate shall pay to the petitioner, out of the proper appropriation, an amount equal to the smaller of: (1) The balance, if any, or (2) the equity of the petitioner.

§ 403.45 Re-appraisal of property involved in an allowed petition.

In determining the nature and extent of the relief to be afforded a petitioner pursuant to § 403.44 the value of the property with respect to which the petition has been allowed is the value of such property as determined by the appraisal thereof made pursuant to § 403.26(a)(2) but if the petitioner desires re-appraisal of the property, after notification as to the conditions of allowances of the petition, and makes written request therefor, undertaking in such request to pay, or to be liable for, the total costs of such re-appraisal, the property shall be re-appraised in the manner in which the original appraisal was made, and the conditions of allowance of the petition shall be modified to the extent required by such re-appraisal.

Subpart E—Appraiser's fees

§ 403.50 Rate of compensation.

Each appraiser selected under § 403.26(a)(2) shall receive as compensation a reasonable fee not to exceed \$15.00 per hour or portion thereof for the performance of such appraiser's duties in appraising property seized as subject to forfeiture under the internal revenue laws and this part.

Because this regulation is nonsubstantive, liberalizing and essentially procedural, it is found unnecessary to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

[T.D. 7695, 45 FR 27932, Apr. 25, 1980]

Subpart F—Administrative Sale of Personal Property

§ 403.55 Alternative methods of sale.

When personal property forfeited administratively is to be sold, the Commissioner or his delegate shall cause a notice of sale to be placed in a newspaper of general circulation published in the judicial district wherein the seizure was made. The sale shall occur not less than 10 days from the date of the publication of the notice. At the discretion of the Commissioner or his delegate the forfeited personal property may be sold at public auction to the highest bidder on open, competitive bids, or sold to the highest bidder on sealed, competitive bids.

(Sec. 7325, 68A Stat. 870, as amended; (26 U.S.C. 7325))

§ 403.56 All bids on unit basis.

All competitive bids shall be on a unit basis. Thus, for example, if a number of forfeited automobiles are advertised for sale at the same date, hour and place, whether or not in the same notice of sale, a separate individual bid is required as to each automobile. The Commissioner or his delegate will not accept one blanket bid to cover the entire group of automobiles offered for sale.

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§ 403.57 Conditions of sale.

(a) *No recourse.* All personal property to be sold shall be offered for sale “as is” and without recourse against the United States.

(b) *No guarantee.* No guarantee or warranty, expressed or implied, shall be given or understood in respect of any forfeited property offered for sale.

(c) *No sale.* (1) The United States reserves the right to reject any bids.

(2) In a case in which all bids are rejected the Commissioner or his delegate shall re-advertise the property for sale in the manner prescribed in § 403.55.

(d) *One bid.* When only one bid is received for a single unit of property such bid shall be the highest bid received for such property.

(Sec. 7325, 68A Stat. 870, as amended (26 U.S.C. 7325 (1), (4)); sec. 7326, 72 Stat. 1429, as amended (26 U.S.C. 7326(a)))

[T.D. 7433, 41 FR 39312, Sept. 15, 1976, as amended by T.D. 7525, 42 FR 64344, Dec. 23, 1977]

§ 403.58 Acceptable forms of payment.

The only acceptable forms of payment shall be cash, cashier’s check, certified check, or postal money order, in the amount of the accepted bid.

§ 403.59 [Reserved]

§ 403.60 Purchaser entitled to bill of sale.

Each purchaser of administratively forfeited property is entitled to receive a suitable bill of sale.

§ 403.61 Sale on open, competitive bids.

If forfeited property is to be sold at public auction to the highest bidder on open, competitive bids, the notice of sale shall so specify, and state the date, hour, and place of such sale.

§ 403.62 Sale on sealed, competitive bids.

If the property is to be sold to the highest bidder on sealed, competitive bids, the notice of sale shall so specify, and shall state the date, hour, and place of sale, and the date, hour, and place prior to the sale when and where prospective bidders may view the property and obtain necessary information.

All sealed bids must be filed with the district director of the internal revenue district in which the property was seized before the sale. No bids will be accepted after the sale starts. At the appointed date, hour, and place of sale, all sealed bids timely filed shall be open in the presence of all bidders attending the sale, who shall have the privilege of inspecting the bids if they so desire.

Subpart G—Disposal of Forfeited Coin-Operated Gaming Devices

§ 403.65 Authority for destruction.

The Commissioner or his delegate is authorized to order the destruction of any coin-operated gaming device as defined in I.R.C. section 4462 upon which a tax is imposed by I.R.C. section 4461, after the expiration of three months from the date of consummation of administrative forfeiture under any provision of I.R.C.

(Sec. 7326, 72 Stat. 1429, as amended (26 U.S.C. 7326))

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Sec.

404.6048–1 Annual returns for foreign trusts with a United States beneficiary.

404.6334(d)–1 Minimum exemption from levy for wages, salary, or other income.

AUTHORITY: Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

§ 404.6048–1 Annual returns for foreign trusts with a United States beneficiary.

(a) *Return required*—(1) *In general.* Each taxpayer subject to tax under section 679 with respect to a foreign trust having one or more United States beneficiaries must file Form 3520–A, Annual Return of Foreign Trust with U.S. Beneficiaries, together with any additional schedules or other information required by the form or the instructions to the form. Form 3520–A must be filed even if the taxpayer is treated as the owner of a foreign trust under both section 679 and some other provision of subpart E of part I of subchapter J.